

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:04CR3045
)	
v.)	
)	
VICTOR C. HARRIS,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

Victor Harris has filed a Motion for Reduction of Sentence under 2011 Crack Cocaine Guidelines Amendment. (Filing no. [179](#).) That motion will be denied.

Harris, whose criminal history category is III, was originally sentenced to 292 months in prison. I determined that he was responsible for at least 846 grams of crack and as a result his base offense level became 36 prior to adjustments. (E.g., filing no. [99](#) (PSR ¶¶ 30, 36).) Because Harris was also held responsible for a gun, and because he was not entitled to acceptance of responsibility points, his total offense level was 38. (E.g., filing no. [103](#).) I sentenced Harris to 292 months in prison, the low end of the range.

In 2008, I reduced Harris' sentence to 235 months in prison after the crack cocaine Guidelines were first amended. (Filing no. [146](#).) I determined that his base offense level was reduced to 34 and his total offense level became 36 rather than 38. (Filing no. [147](#).)

The 2011 amendments do not change Harris' base offense level regarding the 846 grams for which he is held accountable—840 grams or more trigger a base offense level of 34 (*see* drug quantity table). With a total offense level of 36 (34 for the crack plus 2 for the gun) and a criminal history category of III, his Guidelines range is 235

to 293 months in prison. Since Harris has already received a sentence reduction to 235 months in prison (the low end of the range), he is not entitled to relief under the 2011 amendments. U.S.S.G. § 1B1.10(a)(2)(B) (no reduction allowed where amendment does not have the affect of lowering the defendant's applicable guideline range).

IT IS ORDERED that Harris' motion (filing no. [179](#)) is denied. After it is filed, my chambers shall provide a copy of this Memorandum and Order to the prosecutor in the case, David Stickman, the Federal Public Defender, and Supervisory United States Probation Officers Mike Norton and Kelly Nelson. The Clerk shall provide Harris with a copy of this Memorandum and Order.

DATED this 26th day of September, 2011.

BY THE COURT:

Richard G. Kopf
United States District Judge